

# AGENT ALERT

## ERISA & union plan scams

Nationwide, the health insurance marketplace is facing tougher times. Across the country, the cost of health insurance is increasing and consumers cope with difficult choices. Into this climate enter shady operators seeking to take advantage of consumers. Calling themselves “ERISA exempt,” “ERISA plans,” “union plans,” “association plans,” or some variation thereof, these entities boast low rates and minimal or no underwriting. **Remember, if it seems too good to be true, it probably is.** There is a good chance that these entities are not legitimately exempt from state laws, but instead are offering unlicensed health insurance.

These entities claim that they are not subject to state insurance regulation because of “ERISA.” Some claim that agents are used only as “labor consultants” or “business agents” to “enroll” or “negotiate” with potential members, and not to sell. Such claims should be viewed with skepticism. It is a crime to solicit or sell an unauthorized insurance product.

Legitimate ERISA plans (plans governed by the federal Employee Retirement Income Security Act of 1974) and union plans may be exempt from state insurance regulation, which is why criminals try to fool people by making these claims. However, legitimate ERISA or union plans are established by unions for its own members or by an employer for the employer’s own employees. **They are not sold by insurance agents.**

Read all materials and Web sites carefully. Consider the following list of some circumstances and plan characteristics that should prompt your very careful investigation, including contacting the Insurance Department:

- The plan operates like insurance but claims that it is not.
- You are asked to avoid certain insurance terminology, even though the plan operates like insurance.
- The plan is covered only by “stop loss insurance” or refers to “reinsurance.”
- You are asked to sell an “ERISA” plan or “union” plan.
- You are asked to sell an “employee leasing” arrangement with self-funded health coverage.
- The plan targets individuals or groups with employees that have pre-existing conditions.
- The plan advertises unusually low premiums and/or unusually generous benefits, low (or no) minimum requirements for participation, and loose (or no) underwriting guidelines.

Insurance agents should contact the Kentucky Department of Insurance anytime they are approached by an entity that seems suspicious. If you are asked to sell health coverage and it is represented as exempt from insurance regulation under “ERISA” or as a “union” it is probably illegal. The insurance agent who does not inform the Insurance Department takes an enormous risk.

**An agent who fails to report, and sells, an “ERISA” or “union” plan should expect to lose his or her license, to possibly be subject to criminal prosecution and to face personal liability for any claims incurred under the unlicensed coverage.** Anyone with information about an entity offering health coverage without a state license should contact the Kentucky Department of Insurance.



Kentucky Public Protection Cabinet  
Department of Insurance  
P.O. Box 517, Frankfort, KY 40602-0517  
Toll free: 800-595-6053 TDD: 800-648-6056  
<http://insurance.ky.gov/>

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